

NOMINATING A GUARDIAN FOR YOUR CHILD



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NOMINATING A GUARDIAN FOR YOUR CHILD

The following is provided for informational purposes only and is not intended as legal advice. You should consult an attorney if you have questions or concerns about nominating a guardian for your child or want to obtain legal advice.

GUARDIANSHIP

What is a guardianship?

A guardian is a non-parent who is allowed to make decisions about the care, custody, control and education of a child. This is a guardian of the person. These types of guardians have the same responsibilities to care for the child as a parent would. For example, guardians of the person are responsible for providing food, clothing, and shelter, and for meeting all the educational, medical and dental needs of the child. Guardians of the person must provide for the child's safety and nurture the child's physical and emotional growth.

A second type of guardian is one who is appointed to manage income, money or other property the child owns or inherits. This is a guardian of the child's estate (property).

This brochure deals with how to nominate guardians of the person, only. If you have any assets (such as a house, savings or retirement account, or life insurance policy) that you would like to be used for the benefit of a child, during your lifetime or after your death, you should consult an attorney to assist you in drafting estate planning documents. Advance planning can guarantee that your assets are used in the way you wish them to be used and can avoid expensive probate court proceedings.

How long does a guardianship of the person last?

A guardianship of the person lasts until the child turns 18 years old. It will end before the child turns 18 years old if the child marries, is adopted, dies, enters the military, or if the guardianship is terminated by a court order.

What is nominating a guardian?

Nominating a guardian for your child allows you to indicate who you would like to take care of your child in the event you pass away or become unable to care for your child. Although the Court is not required to appoint the guardian you choose, nominating a guardian is a way to make sure the Court knows your wishes.

How is a guardianship established?

Nominating a guardian on a form or in a will does not by itself create a guardianship. A guardianship order must be obtained from the Probate Court. To do this, the person you nominate will need to file a Petition for Appointment of Guardian with the Probate Court, notify certain persons and agencies, and attend a court hearing. Although the probate court will take into account your wishes, other people will also have the opportunity to request guardianship.

What is the difference between adoption and guardianship?

Adoption establishes a permanent, life-long relationship of parent and child, creating rights and responsibilities equal to those of biological parents, including rights of inheritance. A guardianship, on the other hand, is a temporary arrangement through which the guardian is allowed to make decisions about the care, custody, control and education of a child. A guardianship usually lasts until the child's 18th birthday but will end before the child turns 18 years old if the child marries, is adopted, dies, enters the military, or if the guardianship is ended by a court order.



NOMINATING A GUARDIAN

How do I nominate a guardian?

There are two ways to nominate a guardian for your child. One way is to fill out a nomination of guardian form. A second way is to nominate a guardian in your will.

1. **Filling out the Nomination of Guardian Form:** A nomination of guardian form allows you to list your choice(s) for who should have guardianship over your child(ren) in case of your death or incapacitation. The form requires both your signature and the signature of the potential legal guardian(s) and it will need to be notarized. Make sure that both you and the potential legal guardian(s) keep copies of the nomination form.

If you nominate a guardian and then change your mind, you may revoke your guardianship nomination at any time by signing and notarizing a new nomination form, and indicating in this new nomination that you are revoking any prior guardianship nominations.

- a. A sample nomination of guardian form is included in this brochure. You can also obtain the nomination of guardian form on the Public Counsel website at www.publiccounsel.org.
 - b. The nomination of guardian form is for guardianship of the person only. If you have property, you should consult an attorney to assist you in drafting a will.
2. **Nominating a Guardian in Your Will:** A will is a document that directs how you want your estate to be handled after your death. A will can indicate who you would like to be appointed guardian of your minor child(ren). For more information on wills you can see “Do I Need a Will?” available at:
<http://www.calbar.ca.gov/Public/Pamphlets/Will.aspx>

In the state of California, there are three possible ways to create a will.

- a. **Holographic Will:** A holographic will is a will that is entirely handwritten and signed by the person making the will. The will must be legibly completed in your handwriting, and must be dated and signed.
- b. **California Statutory Will:** A California Statutory Will is a legal form allowing you to “fill in the blanks.” This form allows you to nominate up to three potential guardians for your child(ren). You will need to sign and date the will and have two witnesses sign it. If you do not understand any portion of the statutory will form, you should speak with an attorney for clarification.

Note: A blank statutory will may be found at <http://www.calbar.ca.gov/Portals/o/documents/publications/Will-Form.pdf>.

- c. **Attorney Prepared Will:** You can have an attorney prepare a will for you. The cost of an attorney prepared will varies depending on your individual circumstances.
 - i. If you need help finding a private attorney who can draft your will, you can call the California Lawyer Referral Services Program (LRS) at 866-44-CA-LAW (1-866-442-2529). You can also visit the LRS: website at: <http://www.calbar.ca.gov/Public/LawyerReferralServicesLRS.aspx>
 - ii. Another option for finding a private attorney is to call the Los Angeles County Bar Attorney Referral number at (213) 243-1525.
 - iii. If you live in Los Angeles County and are low-income, you may be eligible for free legal assistance in drafting a will at Bet Tzedek. Please call (323) 939-0506 for more information.



FINANCIAL ASSISTANCE

What financial assistance/ benefits may be available to the legal guardian and my child?

1. If the legal guardian is a relative, the guardian may receive a monthly cash assistance payment from CalWORKS and the child will be eligible for Medi-Cal.
2. If the legal guardian is a non-relative, the guardian may receive a monthly cash payment through the AFDC-FC or state foster care program and the child will be eligible for Medi-Cal. Your child's guardian must call the DCFS Child Protection Hotline at (213) 765-7260 to request cash assistance. The appropriateness of the home and safety of the child may need to be assessed.
3. Your child may be eligible for social security benefits. For example, your child may receive Social Security Survivor Benefits upon your death if you have paid the required amount of social security taxes. In addition, the child may be eligible for Supplemental Security Income (SSI) if the child is disabled.
4. If your child was adopted and you are receiving Adoption Assistance Program (AAP) payments, the AAP payments end upon your death. However, the person who becomes your child's guardian may be eligible for the financial assistance outlined above. In addition, AAP may be resumed if the child is readopted. More information about the adoption process can be obtained by contacting DCFS's Independent Adoption Program at (213)-351-0224 or (213)-351-0162. AAP payments can be collected retroactively to the date the Adoption Petition is filed.
 - a. If your child was not previously adopted but is adopted after your death, the child may qualify for AAP if the child is eligible for Supplemental Security Income (SSI). The child's eligibility for SSI would need to be determined and documented by the Social Security Administration before the adoption is finalized. Note that an Agreement must also be signed prior to finalization of the adoption.

Please see "Caring for Another Person's Child: A Guide for Non-Parent Caregivers in Los Angeles County" for more details on the potential financial assistance and benefits available. The Guide is available at: <http://www.publiccounsel.org/publications?id=0021>.

NOMINATION OF A GUARDIAN SAMPLE FORM

NOMINATION OF GUARDIAN

I, _____, the parent of the following children, nominate _____ to act as guardian of the person of said children in the event of my death or incapacity, (and in the event that the children's second parent is similarly deceased or incapacitated). If _____ is unable or unwilling to serve as guardian, I nominate _____ to serve as guardian of the person of said children. If guardianship is sought due to my incapacitation, such incapacitation must be documented with a signed original letter from a licensed physician.

Minor's name

Minor's Date of Birth

- 1.
- 2.
- 3.
- 4.

Parent #1 Name _____
Signature: _____ Date: _____

Parent #2 Name _____
Signature: _____ Date: _____

I ACCEPT THIS NOMINATION:

First Proposed Guardian Name

Signature: _____ Date: _____

Second Proposed Guardian Name

Signature: _____ Date: _____

NOTARY PUBLIC INFORMATION IS ON THE NEXT PAGE

NOTARY PUBLIC INFORMATION

State of California)
County of _____)

On _____ before me, _____,
Date Name and Title of the Officer

Personally appeared _____
Name(s) of Signer(s)

_____,
who proved to me on the basis of satisfactory
evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged
to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

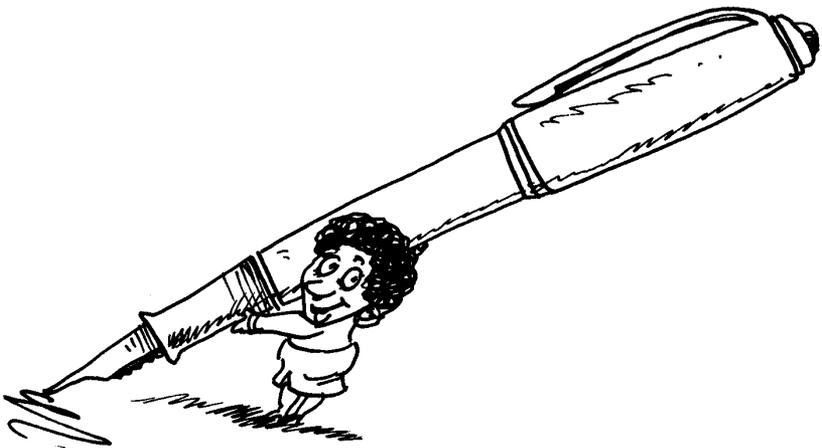
I certify under PENALTY OF PERJURY under the laws
of the State of California that the foregoing paragraph
is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature: _____
Signature of Notary Public

Notes



MORE INFORMATION

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While this publication is designed to provide accurate and current information about the law, readers should contact an attorney or other expert for advice in particular cases, and should also consult the relevant statutes and court decisions when relying on cited materials.

The contents of this brochure may be reprinted. Any adaptation or translation of the contents of this brochure must be authorized by Public Counsel.

You may find this booklet and other Public Counsel booklets at **www.publiccounsel.org/practice_areas/childrens_rights**. Click on the “Publications” tab.

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Nominating a guardian

This booklet will help you understand how to nominate a guardian. This booklet will discuss:

- What is a guardian?
- How long a guardianship lasts?
- What does it mean to nominate a guardian?
- And what financial assistance/benefits are available?

We are here to help.

**HAVE QUESTIONS FOR
AN ATTORNEY?
213-385-2977 X500
OR VISIT: WWW.PUBLICCOUNSEL.ORG**

**Public
Counsel** 
610 SOUTH ARDMORE AVENUE
LOS ANGELES, CA 90005
PUBLICCOUNSEL.ORG